

**EXHIBIT D-2**

**Weatherford Proof of Claim No. 1719**

**WR Grace**

SR00000088

Bankruptcy Form 10

Index Sheet

Claim Number: 00001719Receive Date: 08 / 07 / 2002**Multiple Claim Reference**

Claim Number _____	<input type="checkbox"/> MMPOC	Medical Monitoring Claim Form
	<input type="checkbox"/> PDPOC	Property Damage
	<input type="checkbox"/> NAPO	Non-Asbestos Claim Form
	<input type="checkbox"/>	Amended

Claim Number _____	<input type="checkbox"/> MMPOC	Medical Monitoring Claim Form
	<input type="checkbox"/> PDPOC	Property Damage
	<input type="checkbox"/> NAPO	Non-Asbestos Claim Form
	<input type="checkbox"/>	Amended

**Attorney Information**Firm Number: 00186Firm Name: Andrews & Kurth LLPAttorney Number: 00059Attorney Name: Helen FergusonZip Code: 10022Cover Letter Location Number: SR00000088

Attachments Medical Monitoring	Attachments Property Damage	Non-Asbestos
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	<input type="checkbox"/> Other Attachments
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
<input type="checkbox"/> TBD	<input type="checkbox"/> TBD	
	<input type="checkbox"/> Other Attachments	
<b>Other</b>	<input type="checkbox"/> Non-Standard Form	
	<input type="checkbox"/> Amended	
	<input type="checkbox"/> Post-Deadline Postmark Date	

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF Delaware		GRACE NON-ASBESTOS PROOF OF CLAIM FORM
Name of Debtor: <b>W. R. Grace &amp; Co.</b>	Case Number <b>01-01139 (JJF) Jointly Administered</b>	THIS SPACE IS FOR COURT USE ONLY
NOTE: Do not use this form to assert an Asbestos Personal Injury Claim, a Settled Asbestos Claim or a Zonolite Attic Insulation Claim. Those claims will be subject to a separate claims submission process. This form should also not be used to file a claim for an Asbestos Property Damage Claim or Medical Monitoring Claim. A specialized claim form for each of these claims should be filed.		
Name of Creditor (The person or other entity to whom the Debtor owes money or property): <b>Weatherford International, Inc.</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: <b>Mr. Burt Martin Weatherford International, Inc. 515 Post Oak Boulevard, Suite 600 Houston, TX 77027 Telephone No.: 713-693-4000</b>		
Account or other number by which creditor identifies Debtor:	Check here if this claim <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, date: _____	
Corporate Name, Common Name, and/or d/b/a name of specific Debtor against whom the claim is asserted:		
<b>1 BASIS FOR CLAIM</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Environmental liability <input type="checkbox"/> Money loaned <input type="checkbox"/> Non-asbestos personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other Claim Under Agreement		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. §1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS # _____ Unpaid compensation for services performed from _____ to _____ (date)		
<b>2 Date Debt Was Incurred:</b>		<b>3. If Court Judgment, Date Obtained:</b>
<b>4 Total Amount of Claim at Time Case filed:</b>		<b>\$ 351,758 plus interest, costs and attorneys' fees</b>
If all or part of your claim is secured or entitled to priority, also complete Item 5 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Classification of Claim: Under the Bankruptcy Code all claims are classified as one or more of the following (1) Unsecured Nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED.</b>		
<input type="checkbox"/> SECURED CLAIM (check this box if your claim is secured by collateral, including a right of setoff.) Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Other (Describe briefly) _____ Amount of arrearage and other charges at time case filed included in secured claim above, if any: \$ _____ Attach evidence of perfection of security interest <input type="checkbox"/> UNSECURED NONPRIORITY CLAIM A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or the extent that the value of such property is less than the amount of the claim.		<input type="checkbox"/> UNSECURED PRIORITY CLAIM- Specify the priority of the claim <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier-11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan-11 U.S.C. § 507(a)(4) <input type="checkbox"/> Taxes or penalties of governmental units-11 U.S.C. §507(a)(6) <input type="checkbox"/> Other-Specify applicable paragraph of 11 U.S.C. § 507 (a)( _____ )
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>7. Supporting documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>8. Acknowledgment:</b> Upon receipt and processing of the Proof of Claim, you will receive an acknowledgment card indicating the date of filing and your unique claim number. If you want a file stamped copy of the Proof of Claim form itself, enclose a self-addressed envelope and copy of this proof of claim form.		This Space is for Court Use Only  <div style="font-size: 2em; font-weight: bold;">AUG 07 2002</div>
Date: <b>8/1/02</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach a copy of power of attorney, if any) <div style="font-family: cursive; font-size: 1.2em;">Burt M. Martin</div> <b>BURT M. MARTIN, SENIOR VICE PRESIDENT</b>	

WR Grace

BF.9.33.1629

00001719

SR=88

1. On March 31, 1993, Weatherford U.S., Inc., n/k/a Weatherford International, Inc. ("Weatherford") entered into a lease agreement with Homco International, Inc. ("Homco"), pursuant to which Weatherford, as tenant, leased from Homco, as landlord, a certain premises located at Kalkaska, Michigan (the "Kalkaska Property").

2. In 1994, Weatherford purchased the Kalkaska Property from Homco pursuant to a sales agreement by and among Homco, W.R. Grace & Co. ("Grace") and Weatherford dated March 1, 1994 (the "Purchase Agreement"). A copy of the Purchase Agreement is annexed hereto as Exhibit A.

3. Pursuant to Section 4 of the Purchase Agreement, Homco and Grace agreed to indemnify Weatherford for, *inter alia*, all liabilities, responsibilities, claims, suits, losses, costs (including remediation, removal, response, abatement, clean up, investigative and/or monitoring cost) associated with environmental cleanup of contamination existing at the site prior to the date of the sale of the site.

4. The Kalkaska Property has since become the subject of a Consent Decree with the State of Michigan, and Grace and Homco have agreed to undertake certain remediation efforts specified therein. A copy of the Consent Decree is annexed hereto as Exhibit B.

5. Grace/Homco has thus far conducted the remediation and taken the other actions required under the Consent Decree and has paid all costs and expenses associated with such actions.

6. Weatherford estimates that in order to comply with the Consent Decree, Grace/Homco will need to spend an additional \$351,758 for remediation, monitoring and other actions required by the Consent Decree.

7. Accordingly, Weatherford asserts an unsecured claim against Grace and Homco without prejudice to Weatherford's right to seek an administrative claim for such amounts pursuant to Section 503(b)(1) of the Bankruptcy Code in the amount of \$351,758, plus costs and attorneys' fees to the extent allowed under the Purchase Agreement or applicable law.

Exhibit A

SALES AGREEMENT

THIS AGREEMENT dated as of March 1, 1994, by and among HOMCO INTERNATIONAL, INC. ("Homco"), a Delaware corporation, and W. R. GRACE & CO. ("Grace"), a New York corporation (collectively "Sellers"), and WEATHERFORD U.S., INC. ("Purchaser"), a Delaware corporation.

WITNESSETH:

WHEREAS, Homco owns the real property described on Exhibit A attached hereto and made a part hereof (the "Real Property") together with those buildings and improvements located thereon, together with the furniture, fixtures, office equipment and supplies located thereon (the "Improvements"), the Real Property and Improvements being collectively referred to as the "Subject Premises"; and

WHEREAS, as of March 31, 1993, Homco sold to Purchaser the inventory for resale, rental tools, service equipment and other rights and interests located at Subject Premises pursuant to an Amended and Restated Assets Purchase Agreement dated as of January 28, 1993 (the "Purchase Agreement"); and

WHEREAS, pursuant to the Lease Agreement made as of March 31, 1993 between Homco and Purchaser (the "Lease"), Purchaser leased the Subject Premises from Homco; and

WHEREAS, Purchaser now wishes to purchase and Homco has agreed to convey to Purchaser the Subject Premises and to terminate the Lease in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual agreements and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Purchase and Conveyance of the Subject Premises; Title Matters.

(a) Homco shall convey to Purchaser the Subject Premises, for the purchase price of \$108,000 in immediately available funds, by a Special Warranty Deed and Bill of Sale in the forms attached hereto as Exhibits B and C and made a part hereof.

(b) Sellers shall furnish Purchaser with a commitment for title insurance for the Real Property from a real estate title insurance company licensed to do business in Michigan.

(c) Purchaser shall be responsible for obtaining title insurance for the Real Property.

2. Closing.

The closing shall occur on March 1, 1994 at 10 a.m. local time at the offices of Peter J. Zirnhelt, P.C. in Traverse City, Michigan or at such other time and place that the parties may designate.

-2-

3. Tax Allocations.

Property taxes and special assessments with respect to the Subject Premises payable directly to taxing authorities shall be allocated between Homco and Purchaser on a per diem basis through the date of Closing, using as the basis for such allocation the amount of the most recent tax statements received from the taxing authorities for such taxes and assessments as of the Closing, whether or not such tax statements cover the tax period during which the Closing occurs. There will be no further allocation of such property taxes as a result of any tax statements received by either of the parties after the Closing.

4. Environmental Matters; Indemnification.

4.1 Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Environmental Matters" shall mean any and all liabilities, responsibilities, claims, suits, losses, costs (including remedial, removal, response, abatement, cleanup, investigative, and/or monitoring costs and any other related costs and expenses), other causes of action recognized now, damages, settlements, expenses, charges, assessments, liens, penalties, fines, prejudgment and post-judgment interest, attorneys' fees and other legal costs incurred or imposed: (i) pursuant to any agreement, order, notice of responsibility, directive (including requirements embodied in Environmental Laws), injunction, judgment or similar documents (including settlements) arising out of, in connection with or under Environmental Laws; (ii) pursuant to any claim by a Governmental Authority or other entity or person for personal injury, property damage, damage to natural resources, remediation, or payment or reimbursement of response costs incurred or expended by such Governmental Authority or other entity or pursuant to common law or statute; or (iii) as a result of any act, omission, event, circumstance or condition on or in connection with the Subject Premises prior to March 31, 1993 (the "Homco Closing"), including, but not limited to, any course of conduct or operating practice which existed or commenced prior to Closing and any pollution, contamination, degradation, damage or injury caused by, arising from or in connection with the generation, use, handling, treatment, storage, disposal, discharge, emission or release of contaminants of pollutants prior to the Homco Closing.

(c) "Environmental Laws" shall mean all laws, ordinances, rules, regulations or official guidance of any Governmental Authority in effect at Closing, which relate to or otherwise impose liability, obligations, or standards with respect to: (a) the control of any potential pollutant or the protection of the environment; (b) solid waste, gaseous waste or liquid waste generation, handling, treatment, storage, disposal or transportation; and (c) exposure to hazardous, toxic or other substances alleged to be harmful, but in each case excluding the Occupational Safety and Health Act of 1970, as amended, and any regulation issued thereunder.

-3-

(d) "Excluded Environmental Matters" shall mean those Environmental Matters that relate to, arise out of or are in any way connected with Sellers' remediation and responsibility hereunder with respect to the Subject Premises in accordance with the reports and correspondence described in Exhibit D and made a part of this Agreement.

(e) "Environmental Equipment" shall mean all wells, piping systems, equipment, buildings, tanks, tools and machinery specifically required by Seller to remediate the Excluded Environmental Matters.

(f) "Governmental Authority" shall mean the Government of the United States, the State of Michigan, County of Kalkaska and Village of Kalkaska and any of their agencies, boards, bureaus, courts, departments or commissions.

(g) "Hazardous Substance" shall mean any substance, the presence of which may require any investigation, regulation or remediation under any Environmental Laws.

(h) "Damages" shall mean any and all claims, actions, liabilities, losses, expenses, costs, judgments, penalties and fines, damages, including any and all expenses, costs and fees of attorneys and professionals related thereto arising from a potential liability to a third party (but excluding consequential damages and damages for lost profits).

(i) "NL Litigation" means the action entitled Homco International, Inc. vs. NL Industries, Inc. and NL Acme Tool, Inc., Case No. H-89-3112 (S.D. Texas filed September 13, 1989)

4.2 Affirmative Covenants of Purchaser; Paving. In order to insure the integrity of Sellers' remediation of the Excluded Environmental Matters, Purchaser shall:

(a) as soon as possible after weather conditions permit, (but no later than May 31, 1994) pave the surface of Lot 11 of the Subject Premises at its sole expense in accordance with specifications of, and by contractors approved by, Sellers;

(b) notify Sellers of any and all construction or maintenance activities on the Subject Premises and conduct such activities in a manner that will not disrupt or adversely affect Sellers' remediation of the Excluded Environmental Matters until such time as Sellers receive a "full implementation letter" or similar correspondence from the Michigan Department of Natural Resources or other Governmental Authority requiring no further remediation of the Excluded Environmental Matters with respect to the Subject Premises;

(c) use Lot 12 of the Subject Premises only for the purpose of storing tubular goods and equipment; and

-4-

(d) inspect and steam clean all tools, threads and drill collars only in the designated roofed area of Lot 11 of the Subject Premises as shown on the map attached as Exhibit E and made a part hereof using procedures that capture outfall.

4.3 Negative Covenants of Purchaser. In order to insure the integrity of Sellers' remediation of the Excluded Environmental Matters, Purchaser shall not:

(a) store any equipment, supplies or materials that contain any Hazardous Substance on Lot 12 of the Subject Premises; or

(b) clean or inspect any tubular goods on the Subject Premises, except as provided in Section 4.2(d) above.

4.4 Environmental Equipment of Sellers; Access. Purchaser shall allow Sellers and their employees, agents, licensees, subcontractors, consultants and representatives access to the Subject Premises 24 hours a day, seven days a week, at no charge or rental for purposes of installing, maintaining, repairing or constructing the Environmental Equipment; provided, however, that Sellers shall at all times coordinate such actions with Purchaser so as not to unreasonably interfere with the business of Purchaser. Purchaser shall not remove, modify, alter, or destroy the Environmental Equipment without Sellers' written consent.

4.5 Sellers' Indemnification.

(a) Sellers shall defend, indemnify and hold harmless Purchaser and its affiliates, controlling persons, officers, directors and employees from and against and in respect of any and all Damages imposed upon, asserted against or incurred by Purchaser relating to the performance of Sellers' obligations under this Agreement or that arise out of, or in connection with, the personal injury or death of any employee, agent, licensee, subcontractor, representative or invitee, or the employee of any agent licensee, subcontractor, representative or invitee, of Sellers to or on the Subject Premises that is caused by Sellers' negligence (direct, indirect, sole or concurrent).

(b) Sellers shall defend, indemnify and hold harmless Purchaser and its affiliates, controlling persons, officers, directors and employees from and against and in respect of any and all Environmental Liabilities that may be imposed upon, asserted against or incurred by Purchaser arising out of the Excluded Environmental Matters at the Subject Premises.

4.6 Purchaser's Indemnification.

(a) Purchaser shall defend, indemnify and hold harmless Sellers and their affiliates, controlling persons, officers, directors and employees from and against and in respect of any and all Damages imposed upon, asserted against or incurred by either or both Sellers relating to the performance of Purchaser's obligations under this Agreement or that arise out of, or in connection with, the personal injury or death of any

-5-

employee, agent, licensee, subcontractor, representative or invitee, or the employee of any agent, licensee, subcontractor, representative or invitee, of Purchaser to or on the Subject Premises that is caused by Purchaser's negligence (direct, indirect, sole or concurrent).

(b) Purchaser shall defend, indemnify and hold harmless Sellers and their affiliates, controlling persons, officers, directors and employees from and against and in respect of any and all Environmental Liabilities that may be imposed upon, asserted against or incurred by Sellers not arising out of the Excluded Environmental Matters at the Subject Premises.

4.7 NL Litigation Evidence. Purchaser shall maintain and not remove any and all materials that are located on the Subject Premises until a final resolution of the NL Litigation. Sellers shall remove all such materials from the Subject Premises at their sole expense within a reasonable time after such resolution. Such materials are being used as evidence in the NL Litigation.

4.8 Environmental Documents and Test Results. Sellers shall provide Purchaser with copies of all reports, tests and correspondence submitted to Governmental Agencies relating to remediation of Subject Premises including test results for Monitor Well Number 5 ("MW-5"). Sellers shall test MW-5 on a quarterly basis in accordance with the "ENSR Interim Environmental Report" dated September, 1993. Such testing shall be for the account of and at the sole expense of Purchaser.

#### 5. Disclaimer of Warranties

PURCHASER ACKNOWLEDGES THAT IT HAS INSPECTED THE SUBJECT PREMISES AND THAT, EXCEPT FOR WARRANTIES CONCERNING TITLE, PURCHASER AGREES AND UNDERSTANDS THAT SELLERS ARE NOT MAKING ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING THE SUBJECT PREMISES INCLUDING SUITABILITY, HABITABILITY, OPERATION, SALABILITY, CONDITION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASER ACCEPTS THE SUBJECT PREMISES ON AN "AS IS," "WHERE IS," "WITH ALL FAULTS" BASIS.

#### 6. Asbestos

Purchaser acknowledges that asbestos-containing materials were in frequent use in the construction and/or renovation of Subject Premises and are or may be present at the Subject Premises. Purchaser represents that it has inspected, or has been given the opportunity to inspect, the Subject Premises for same to the extent it has deemed appropriate.

#### 7. Notice

Any and all notices, requests, demands or communications permitted or required to be given pursuant to this Agreement shall be deemed to have been duly given if in writing and delivered personally or delivered by facsimile transmission or delivered by courier service as follows:

-6-

To Sellers: Homco International, Inc.  
c/o Grace Energy Corporation  
13455 Noel Road - Suite 1500  
Dallas, TX 75240  
ATTN: Secretary  
Telephone: (214) 770-0234  
Fax: (214) 770-0215

W. R. Grace & Co.  
100 North Main - 17th Floor  
Memphis, TN 38103  
ATTN: Manager, Remediation  
Management Dept.  
Telephone: (901) 522-2138  
Fax: (901) 522-2350

with copies to: W. R. Grace & Co.-Conn.  
One Town Center Road  
Boca Raton, FL 33486-1010  
ATTN: Secretary  
Telephone: (407) 362-1959  
Fax: (407) 362-1970

To Purchaser: Weatherford U.S., Inc.  
4710 Bellaire Blvd., Suite 200  
Bellaire, TX 77401  
ATTN: Environmental Manager  
Telephone: (713) 663-6444  
Fax: (713) 295-6106

with copies to: Weatherford International  
Incorporated  
1360 Post Oak Blvd.  
Suite 1000  
Houston, TX 77056  
ATTN: General Counsel  
Telephone: (713) 439-9400  
Fax: (713) 622-0913

#### 8. Termination of Lease

At Closing Purchaser and Sellers shall terminate the Lease by execution of a Termination Agreement in the form attached hereto as Exhibit F and made a part hereof. Such Termination Agreement shall acknowledge, among other things, that Purchaser shall have complied to Sellers' reasonable satisfaction with Section 25 of the Lease. Execution of the Termination Agreement shall be a condition to Closing.

#### 9. General Terms

9.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, excluding the conflict of law provisions thereof that would otherwise require the application of the law of any other jurisdiction.

-7-

9.2 Entire Agreement. This Agreement contains the entire agreement between the parties concerning its subject matter, and supersedes and replaces all prior oral and written agreements and understandings with respect to the Subject Premises.

9.3 Amendment. No agent, employee, or other representative of either party is empowered to alter or amend any of the terms of this Agreement, unless such alteration and/or amendment is in writing and has been signed by an authorized representative of each of the parties. This provision cannot be orally waived.

9.4 Successors, Assigns, etc. The terms and conditions of this Agreement, and the rights and obligations created as a result thereof, shall be binding upon, and/or inure to the benefit of the successors, assigns and subsequent purchasers of the parties. This Agreement and the terms and provisions specified herein shall survive Closing and the passing of title to the Subject Premises.

9.5 Paragraph Headings. The paragraph headings appearing herein are for the convenience of the parties and are not to be used or construed so as to modify the terms and conditions of this Agreement in any fashion.

9.6 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first indicated above.

HOMCO INTERNATIONAL, INC.

By: Frank L. Ryan  
Title: President

WEATHERFORD U.S., INC.

By: Muzanne Thomas  
Title: Sr. Vice President

W. R. GRACE & CO.

By: B. Smith  
Title: Executive Vice President

**EXHIBIT A**

**LEGAL DESCRIPTION**

Land located in the Village of Kalkaska, County of Kalkaska, State of Michigan, described as:

Lots 11 and 12, Industrial Subdivision, as recorded in Liber D of Plats, Page 76, Kalkaska County Records

EXHIBIT 3

DEED

Homco International, Inc., a Delaware corporation hereinafter "Grantor", with an office at Suite 200, 4710 Bellaire Blvd., Bellaire, Texas 77401 for and in consideration of the sum of \$10.00, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant and convey unto Weatherford U.S., Inc., a Delaware corporation, hereinafter "Grantee", with an office at Suite 200, 4710 Bellaire Blvd., Bellaire, Texas 77401, all of Grantor's right, title and interest in those certain lands located in the Village and County of Kalkaska, State of Michigan, to wit:

Lots 11 and 12 of Industrial Subdivision, according to the plat thereof recorded in Liber D of Plats at page 76,

together with all fixtures and appurtenances located thereon, except Environmental Equipment, as that term is defined in that certain Sales Agreement between the parties hereto dated \_\_\_\_\_, and further excepting from this conveyance all mineral, coal, oil and gas, the same having heretofore been reserved by the State of Michigan as cited below.

This conveyance is subject to the terms and conditions of said Sales Agreement and in particular, but not by way of limitation, is subject to the rights retained by the Grantor for continued access to the subject premises and the limitation on use of said premises pending remediation of Known Environmental Liabilities, as more particularly set forth in said Sales Agreement. The rights so retained and the limitation on use, as well as the remaining terms and conditions of Sales Agreement, shall be binding upon Grantee, its successors and assigns in title.

Until the Michigan Department of Natural Resources, or other governmental authority, having jurisdiction, authorizes discontinuance of further remediation of Known Environmental Liabilities, Grantee and its successors and assigns in title shall, each and everyone of them, include the following provision in each future conveyance of all or any portion of the subject premises:

"Notice is hereby given that the lands which are the subject of this conveyance are subject to the rights of Homco International, Inc, a Delaware corporation, and W.R. Grace & Co., a New York corporation, or either of them or any of their successors or assigns, to enter upon the subject premises for the purpose of remediating certain environmental contamination from said premises. Notice is further given that pending authorization by the Michigan Department of Natural Resources, or other governmental authority having jurisdiction, to discontinue such remediation, certain restrictions apply to the utilization of the subject premises; for the specifics by which you are directed to the Sales Agreement dated \_\_\_\_\_ between the above named corporations and Weatherford U.S., Inc., a Delaware corporation. This conveyance is made subject to such rights and limitations."

This Deed is given by Grantor, and accepted by Grantee, subject to all easements, rights-of-way, reservations and restrictions of record or which would be apparent upon an inspection of the premises including, but not limited to, the following:

1. Reservation by The State of Michigan of all mineral, coal, oil and gas and all rights incidental thereto, as recited in Deed dated November 6, 1970 and recorded in Liber 116 at page 636, Kalkaska County Register of Deeds records.

2. Easements to Consumers Power Company as dated May 13, 1968

and recorded in Liber 105 at pages 89 and 89A of said records (electric distribution line) and dated October 13, 1972 and recorded in Liber 131 at page 180 of said records (guy wire & anchor).

3. Restriction on use of subject lands "for industrial purposes only" in Warranty Deed dated April 27, 1972 and recorded in Liber 125 at page 49 of said records.

4. Utility easements and any other easements as shown on plat, recorded May 10, 1974 in Liber D at page 76 of said records.

5. Declaration of Restrictions on Use and Occupancy dated September 14, 1974 and recorded in Liber 145 at pages 48 through 54 of said records.

Grantor warrants to Grantee, and to Grantee's successors and assigns in title, that it has not created or permitted to be created any lien, charge or encumbrance against the subject premises which is not of record in the office of the Register of Deeds of said County, except for Known Environmental Liabilities referenced above, and Grantor covenants to defend, the title to the subject premise to the extent of said warranty as against any and all lawful claims or demands arising by, through or under Grantor, but no other; however, Grantor grants to Grantee the benefit of all previous warranties in Grantor's chain of title.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1993

Witnesses:

Homco International, Inc.,  
a Delaware corporation

by: \_\_\_\_\_

its: \_\_\_\_\_

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss

The foregoing instrument was acknowledged before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 1993,  
by \_\_\_\_\_  
of Homco International, Inc., a Delaware corporation,  
on behalf of the Corporation.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_ County \_\_\_\_\_

My commission expires: \_\_\_\_\_

PREPARED BY:

Peter J. Zirnheilt, Esq.  
400 East Eighth Street  
P.O. Box 1067  
Traverse City, MI 49685-1067  
(616) 946-8630  
p/f/90385ded

EXHIBIT C

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that Homco International, Inc., a Delaware corporation (hereinafter "Seller"), with an office at Suite 200, 4710 Bellaire Blvd., Bellaire, Texas 77401, in consideration of the sum of \$10.00 and other valuable consideration, to it in hand paid by Weatherford U.S., Inc., a Delaware corporation (hereinafter "Purchaser"), with an office at Suite 200, 4710 Bellaire Blvd., Bellaire, Texas 77401, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, conveyed, transferred and delivered, and by these presents does grant, bargain, sell, convey, transfer and deliver unto Purchaser, all of Seller's right, title and interest in and to all the equipment, machinery, furniture, furnishings and other personal property (collectively "Personalty") located on those lands located in the Village and County of Kalkaska and State of Michigan more particularly described as:

Lots 11 and 12 of Industrial Subdivision, according to the plat thereof recorded in Liber D of Plats of page 76, of the office of the Register of Deeds for said county,

and commonly known as 424 East Dresden Street in said Village, which Personalty is the subject of that certain Lease Agreement between the parties hereto dated March 31, 1993; provided that "Personalty" does not include "Tenant's

Personal Property", as that term is defined in said Lease Agreement, which was heretofore acquired by Purchaser under the terms of that certain Amended and Restated Assets Purchase Agreement between the parties hereto dated January 28, 1993; and provided further that Personalty does not include Environmental Equipment, as that term is defined in that certain Sales Agreement between the parties hereto dated \_\_\_\_\_. This Bill of Sale is pursuant to and subject to the terms and conditions of said Sales Agreement. Personalty is sold, conveyed, transferred and delivered to Purchaser in as is and where is condition. This sale of Personalty is without warranty of any kind except that Seller warrants to Purchaser that title to Personalty has not been incumbered as between Seller and any third party.

IN WITNESS WHEREOF Seller has caused this Bill of Sale to be executed on its behalf this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

WITNESSES:

Homco International, Inc.,  
a Delaware corporation

by: \_\_\_\_\_

its: \_\_\_\_\_

EXHIBIT D

Harding Lawson Associates

DOCUMENT SUMMARY

FILE LETTERS UP TO 1992  
HOMCO INTERNATIONAL, INC.  
SITE NO. 166

424, EAST DRESDEN, KALKASKA, MICHIGAN

October 21, 1982: DNR to NL - Requested control of spray paint, wastewater discharge, and spillage of oil. No permit to discharge. Overspray of paint and runoff of paint/solvents is a concern. Conducted outside on concrete pad. Spillage of fuel oil used for soaking parts in yard. Questioned floor drain system and pretreatment necessary to discharge to sanitary system.

November 5, 1982: NL Response to DNR - Steam cleaning and painting operations moved inside. Drums used for soaking parts in oil also moved inside. Evaluated feasibility of hooking up to city sewer.

Note in file that hook-up to sanitary sewer being completed (11-9-82).

October 15, 1985: DNR to NL - Connection to sanitary sewer not completed. Floor drains still connected to holding tanks. Corrective actions not to DNR satisfaction. Requested that a determination be made concerning outlet of tanks! Appeared that steam cleaning still conducted outside. No paint booth, DNR still concerned for overspray.

December 19, 1985: DNR to NL - Summary of inspection. Floor drains in two areas drain to suspected seepage tanks or dry wells. Replaced with sealed holding tanks. Plan was to seal floor drain in east room and hook floor drain in mechanical shop to City POTW after connecting to an oil/water separator. Appears that one floor drain was abandoned.

October 15, 1990 - Letter from Coding Products, adjacent property owner, reporting contamination. Upgradient source, i.e., Acme/Maxco/Well Tech/Craft House/Michigan Diesel Power.

Requested meeting on 10/19 with Environmental Solutions Inc. (Coding Products consultant).

October 26, 1990: ENSR to HOMCO - Proposal to conduct groundwater characterization in three phases.

- (1) Field screen plume with Photovac unit, i.e., soil gas survey with a 50' grid. Collect composite soil samples.

FEB 24 1994 0 15PM WIT-LEGAL

Harding Lawson Associates

## DOCUMENT SUMMARY

### FILE LETTERS UP TO 1992 HOMCO INTERNATIONAL, INC.

SITE NO. 166  
424, EAST DRESDEN, KALKASKA, MICHIGAN  
(Continued)

- (2) Develop strategy for installing wells based on Task 1.
- (3) Address remediation if on-site source identified.

Composite soil samples along grid if no visible contamination identified (Task 1).

October 26, 1990: Letter from Vinson & Elkins to ENSR - Requested assistance due to potential groundwater contamination and litigation. Assistance to include:

- Soil gas survey;
- Surface soil sampling; and
- Meeting with DNR and split samples.

November 11, 1990: ENSR to HOMCO - Completed Task 1, no results presented. Referenced Nov. 5, 1990 discussion. Initially recommended three wells and sampling water from hand auger borings. Settled on six monitor wells. Location: three wells in path of plume and three wells laterally upgradient. Four feet of screen, bottom of screen to depth of 12', with 3' extended into the saturated zone. Installed wells by advancing to 12' and pushing screen and casing to depth! BETX and BETX-semi-volatiles along plume.

November 30, 1990: HOMCO to ENSR - Authorization to act on behalf of HOMCO during negotiations with State.

December 5, 1990: ENSR to HOMCO and Vinson & Elkins - Draft letter to DNR on plans for characterization and remediation. Concern of DNR is to sample areas with extensive surface contamination that could extend to groundwater i.e., source. Sources include:

- (1) BOP pad;
- (2) South side of building (previous cleaning activities);

Harding Lawson Associates

## DOCUMENT SUMMARY

**FILE LETTERS UP TO 1992  
HOMCO INTERNATIONAL, INC.  
SITE NO. 166  
424, EAST DRESDEN, KALKASKA, MICHIGAN  
(Continued)**

- (3) Diesel tank; and
- (4) Sump (abandoned).

Soil sampling to 3', i.e., 1.5/3.0 feet depths. Analysis includes BETX, PNAs, and TOX.

December 7, 1990: Summary from ENSR to Vinson & Elkins and HOMCO - Similar to 12-5-90 letter to DNR.

- Issues:
- (1) Xylene plume in Coding Products upgradient well;
  - (2) Removal of source; and
  - (3) Disposal of sludge (sump).

Three apparent upgradient wells, i.e., south and east property lines were clean, i.e., no BETX. No data on development procedures after installation, well installation techniques which could have caused problems! Cited EPA and statistical data using three data points. Rest of data pending. Plan to sample soils at 3', 6', 8' depths in areas with suspected contamination.

Characterizing sump sludge for disposal. Recommended dye test for sump piping and tanks.

No map provided with well locations. No analytical data on groundwater. No report on soil vapor survey which was used to select well locations.

January 25, 1991: ENSR to HOMCO - Approval from DNR to have sump/oil water separator sludges disposed as a non-hazardous waste. Provided list of qualified, permitted companies. Passed TCLP, recommended no charge in operations.

Harding Lawson Associates

## DOCUMENT SUMMARY

**FILE LETTERS UP TO 1992  
HOMCO INTERNATIONAL, INC.  
SITE NO. 166  
424, EAST DRESDEN, KALKASKA, MICHIGAN  
(Continued)**

May 23, 1991: ENSR to DNR - Supplemental Soils Investigation Work Plan for Pipe Inspection Area - May 1991.

June 4, 1991: ENSR to DNR - Soil Remediation Work Plan - May 24, 1991.

Both of the above documents basically repeat previous information.

October 3, 1991: HOMCO to Coding Products - Response to Coding Products letter. Attempt to share in costs for remediation and characterization!

November 11, 1991: Joe Batiste to file - Spill of 65-85 gallons of diesel fuel. Spilled November 9, 1991, accidental rupture of tank during loading. Tried to contact DNR. Contacted ENSR, ENSR remediated 140 cubic yards of soil. Collected verification samples. Not clear if DNR contacted.

January 7, 1992: HOMCO to Coding Products - Proposed to share costs of existing wells and sampling.

January 20, 1992: Coding Products to HOMCO - Response to cost sharing.

January 29, 1992: ENSR to DNR - Summary of diesel fuel response. Location of spill was just east of machine shop.

April 27, 1992: Letter from HOMCO to GRACE on pipeline incident - Line apparently not correctly marked by MichCon Gas Utility. Gas line was PVC. No spark and no injuries.

May 26, 1992 Newspaper article, gas leak in natural gas line, struck by Terra Tech (CPT firm) of Houston during environmental work. Did not mention HOMCO. April 29, 1992 incident during off-site work.

Harding Lawson Associates

## DOCUMENT SUMMARY

**FILE LETTERS UP TO 1992  
HOMCO INTERNATIONAL, INC.  
SITE NO. 166  
424, EAST DRESDEN, KALKASKA, MICHIGAN  
(Continued)**

June 8, 1992: ENSR to DNR on Groundwater Plume Delineation - Statement that HOMCO is not sole contributor to plume due to nature of businesses upgradient.

DNR requested further delineation of xylene plume. DNR anticipates a Type A closure for the diesel plume. No mention of TPH data not being run.

June 17, 1992: HOMCO to DNR - Letter objecting to issuance of a permit to reinject treated groundwater by Coding Products. HOMCO has five objections that basically involve future liability. Mounding and redirecting the plume is a concern.

June 19, 1992: ENSR to HOMCO - Previous pipe inspection activities. Probably a source of the contamination due to use of solvents spilling onto ground surface. Referenced use of pipe dope. Generally contain high lead which is why site has not been characterized for metals!

Reference to a disposal pit used by Maxco (to south) to dispose chemicals, etc.

According to Jim Rowell, Kal Con Construction and former NT employee, NT routinely buried waste on-site at location approximately 25 feet from back fence.

June 25, 1992: Coding Products to HOMCO - Historical costs for groundwater controls.

July 24, 1992: HOMCO to Coding Products - Groundwater cost sharing proposal.

July 30, 1992: ENSR to Village Superintendent, Village of Kalkaska - Village requested information on groundwater contamination. Summary of investigation.

September 2, 1992: Coding Products to HOMCO - Cost sharing.

September 9, 1992: ENSR to HOMCO - DNR concerned about drinking water wells (private and city) in Village of Kalkaska.

Harding Lawson Associates

**DOCUMENT SUMMARY**

**FILE LETTERS UP TO 1992  
HOMCO INTERNATIONAL, INC.  
SITE NO. 166  
424, EAST DRESDEN, KALKASKA, MICHIGAN  
(Continued)**

September 15, 1992: DNR to HOMCO - Not satisfied with progress on TCE plume delineation.

September 22, 1992: DNR Memo - Stated no further action required on diesel spill.

October 9, 1992: ENSR to HOMCO - Recommendation to locate downgradient end of TCE plume. DNR has allocated \$200,000 to locate all potential water wells downgradient. Cost recovery would be sought from HOMCO and others.

October 14, 1992: ENSR to B&L Trucking - Seeking cost recovery for clean-up of diesel spill caused by B&L Trucking.

November 16, 1992/November 18, 1992 Letters to off-site property owners seeking approval to conduct investigative work.

Harding Lawson Associates

**DOCUMENT SUMMARY**

**WORK PLANS AND REPORTS  
HOMCO INTERNATIONAL, INC.  
SITE NO. 166  
424 EAST DRESDEN, KALKASKA, MICHIGAN**

**Documents Submitted by ENSR Consulting and Engineering and others (1990-1993):**

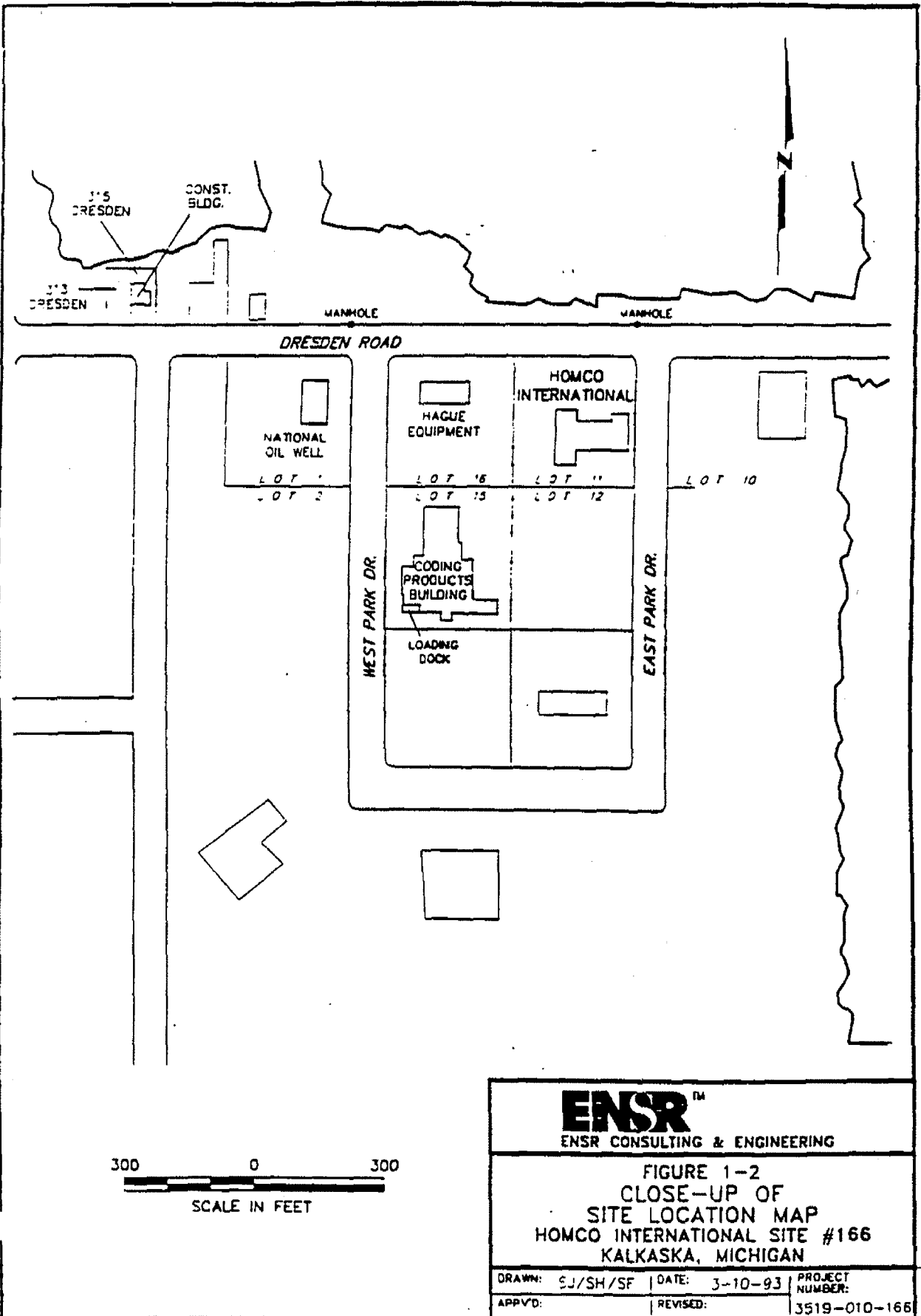
<b>DATE</b>	<b>DOCUMENT TITLE</b>
June 1990	Coding Products Hydrogeological Investigation, Kalkaska, Michigan (Environmental Solutions, Inc. Document).
October 1990	Phase I Site Investigation, Kalkaska, Michigan. HOMCO Site No. 166.
February 1991	Supplemental Soils Investigation Work Plan for the Former Pipe Inspection Area - HOMCO Site No. 166, Kalkaska, Michigan.
May 1991	Supplemental Soils Investigation Work Plan for Pipe Inspection Area.
May 1991	Summary of Groundwater Investigations Conducted as of March 1991.
November 1991	Hydrogeologic Investigation and Work Plan, HOMCO Site No. 166, Kalkaska, Michigan.
January 1992	Phase III Report, Soil Remediation, Verification Sampling and Capital Improvements, HOMCO Site No. 166.
October 1992	Interim Report I, Subsurface Investigation of TCE Plume Area, HOMCO Site No. 166, 424 East Dresden, Kalkaska, Michigan.
October 1992	Interim Report I, Subsurface Investigation of Northwest Plume Area, HOMCO Site No. 166, 424 East Dresden, Kalkaska, Michigan.
October 1992	Closure Report, Diesel Storage Tank Area, HOMCO Site No. 166, 424 East Dresden, Kalkaska, Michigan.
November 1992	Work Plan - Downgradient TCE Plume Delineation, HOMCO Site No. 166, 424 East Dresden, Kalkaska, Michigan.

Harding Lawson Associates

**DOCUMENT SUMMARY**

**WORK PLANS AND REPORTS  
HOMCO INTERNATIONAL, INC.  
SITE NO. 166  
424 EAST DRESDEN, KALKASKA, MICHIGAN  
(Continued)**

March 1993	Interim Corrective Action Plan for On-Site Plumes.
March 1993	Groundwater Re-injection Permit Exemption.
September 1993	Quarterly Report - TCE Plume Remediation, July 1993, HOMCO Site 166, Kalkaska, Michigan.
September 1993	Quarterly Report - NW Plume Remediation, July 1993, HOMCO Site 166, Kalkaska, Michigan.
September 1993	Interim Report II, Subsurface Investigation of TCE Plume Area, HOMCO Site No. 166, 424 East Dresden, Kalkaska, Michigan.
November 1993	Quarterly Report - TCE Plume Remediation, October 1993, HOMCO Site 166, Kalkaska, Michigan.
November 1993	Quarterly Report - NW Plume Remediation, October 1993, HOMCO Suite 166, Kalkaska, Michigan.



3519-010-166

EXH-B-11 F

LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT dated February \_\_\_\_, 1994, between WEATHERFORD U.S., INC., a Delaware corporation ("Tenant"), and HOMCO INTERNATIONAL, INC., a Delaware corporation ("Landlord").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated as of March 31, 1993 (the "Lease Agreement") for the Premises as that term is defined in the Lease Agreement; and

WHEREAS, the parties hereto desire to terminate and cancel all rights and obligations with respect to the Lease Agreement and waive any and all claims they have or may have against each other arising out of or in connection with the Lease Agreement or occupancy and use of the Premises, except as provided in a Sales Agreement between the parties executed on \_\_\_\_\_, 1993 ("Sales Agreement");

NOW, THEREFORE, in consideration of this Lease Termination Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby respectively acknowledged by the parties hereto, the parties agree as follows:

1. Except as provided in the Sales Agreement, the Lease Agreement is hereby canceled and is of no further force or effect. Tenant agrees that all obligations and duties of the Landlord under the Lease Agreement are terminated, and that Landlord shall be under no obligation to remove any particular structures, equipment or fixtures located on the Premises, it being Tenant's intention to accept the return of the Premises in whatever condition they are left at the time Landlord vacates the same and Tenant expressly waives any obligation on the part of Landlord to restore the Premises to their condition as of the date of the signing of the

-2-

Sales Agreement.

2. Tenant, for itself, its successors and assigns, hereby expressly releases and discharges Landlord and its successors and assigns, from any and all claims, demands, damages and causes of action, known or unknown, which the Tenant has or may have against the Landlord or its successors or assigns arising out of or in any way connected with the Lease Agreement or Landlord's occupancy and use of the Premises, except as provided in the Sales Agreement.

3. Landlord, for itself, its successors and assigns, hereby expressly releases and discharges Tenant and its successors and assigns, from any and all claims, demands, damages and causes of action, known or unknown, which the Landlord has or may have against the Tenant or its successors or assigns arising out of or in any way connected with the Tenant's occupancy and use of the Premises, except as provided in the Sales Agreement.

IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease Termination Agreement to be executed by their duly authorized officers as of the day and year first above written.

HOMCO INTERNATIONAL, INC.

By: Frank L. T. Ryan  
Title: President

WEATHERFORD U.S., INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

-2-

Sales Agreement.

2. Tenant, for itself, its successors and assigns, hereby expressly releases and discharges Landlord and its successors and assigns, from any and all claims, demands, damages and causes of action, known or unknown, which the Tenant has or may have against the Landlord or its successors or assigns arising out of or in any way connected with the Lease Agreement or Landlord's occupancy and use of the Premises, except as provided in the Sales Agreement.

3. Landlord, for itself, its successors and assigns, hereby expressly releases and discharges Tenant and its successors and assigns, from any and all claims, demands, damages and causes of action, known or unknown, which the Landlord has or may have against the Tenant or its successors or assigns arising out of or in any way connected with the Tenant's occupancy and use of the Premises, except as provided in the Sales Agreement.

IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease Termination Agreement to be executed by their duly authorized officers as of the day and year first above written.

HOMCO INTERNATIONAL, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

*Angelique M. Vanasco*

WEATHERFORD U.S., INC.

By: *Wynne Thomas*

Title: *Sr Vice Pres + Sec*

-3-

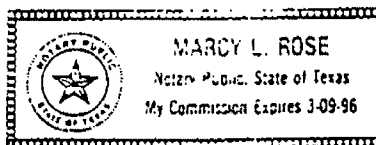
STATE OF TEXAS     )  
COUNTY OF DALLAS    )

On this 15<sup>th</sup> day of March, 1994, before me, appeared Frank L. Ryan, II, to me personally known, who being by me duly sworn, did say that he is Treasurer of Homco International, Inc., a Delaware corporation, and that said instrument was signed on behalf of said corporation, and said Frank acknowledged to me that he/she executed the same for the purposes therein stated as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County and State the date and year last above written.

Marcy L. Rose  
Notary Public

My commission expires: 3/4/06



STATE OF TEXAS     )  
COUNTY OF HARRIS    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1994, before me, appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that he/she is \_\_\_\_\_, of Weatherford U.S., Inc., a Delaware corporation, and that said instrument was signed on behalf of said corporation, and said \_\_\_\_\_ acknowledged to me that he/she executed the same for the purposes therein stated as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County and State the date and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:

-3-

STATE OF TEXAS )  
COUNTY OF DALLAS )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1994, before me, appeared Frank L. Ryan, II, to me personally known, who being by me duly sworn, did say that he is \_\_\_\_\_ of Homco International, Inc., a Delaware corporation, and that said instrument was signed on behalf of said corporation, and said Frank acknowledged to me that he/she executed the same for the purposes therein stated as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County and State the date and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires:

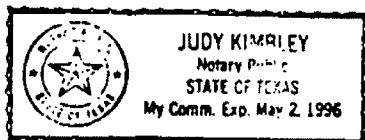
STATE OF TEXAS )  
COUNTY OF HARRIS )

On this 1<sup>st</sup> day of March, 1994, before me, appeared H. Suzanne Thomas, to me personally known, who being by me duly sworn, did say that ~~he~~ she is Sc. Vice President and Secretary, of Weatherford U.S., Inc., a Delaware corporation, and that said instrument was signed on behalf of said corporation, and said H. Suzanne Thomas acknowledged to me that he/she executed the same for the purposes therein stated as the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County and State the date and year last above written.

Judy Kimbley  
\_\_\_\_\_  
Notary Public

My commission expires: 5-2-96



ALL-STATE® LEGAL 800-222-0510 E011 RECYCLED



Exhibit B

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

FRANK J. KELLEY, Attorney General  
of the State of Michigan, ex rel,  
MICHIGAN DEPARTMENT OF NATURAL  
RESOURCES,

Plaintiffs,

v

W. R. GRACE & CO. - CONN.,  
HOMCO INTERNATIONAL, INC.,  
N. L. INDUSTRIES, WEATHERFORD  
U.S. INC., AND WEATHERFORD  
INTERNATIONAL, INCORPORATED,

Defendants.

File No.

HON.

*Michael Harrison*  
94-78818-CE

CONSENT DECREE

The Plaintiffs are Frank J. Kelley, Attorney General of the State of Michigan, and Michigan Department of Natural Resources ("MDNR").

The Defendants are W.R. Grace & Co. - Conn. ("Grace"), HOMCO International, Inc. ("HOMCO"), NL Industries, Inc. ("NL"), Weatherford U.S. Inc. ("Weatherford U.S.") and Weatherford International Incorporated ("Weatherford International").

The Consent Decree requires the preparation and performance of the Remedial Action for contamination at or emanating from the HOMCO site, Kalkaska, Michigan (hereafter "Facility", as the term is defined in the Michigan Environmental Response Act ("MERA")). Defendants agree not to contest: (a) the authority or jurisdic-

tion of the Court to enter this Consent Decree; or (b) any terms or conditions set forth herein.

The entry of this Decree by Defendants is neither an admission of liability with respect to any issue dealt with in this Decree nor is it an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the Court by entering this Decree finds that the Remedial Actions set forth herein are necessary to abate Releases of Hazardous Substances into the environment to control future Releases and to protect public health, welfare, safety and the environment.

NOW, THEREFORE, before the taking of any testimony, and without this Consent Decree constituting an admission of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED AND DECREED:

#### I. JURISDICTION

1.1. This Court has jurisdiction over the subject matter of this action pursuant to MCL 299.616. This Court also has personal jurisdiction over the Defendants. Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

1.2. The Court determines that the terms and conditions of this Consent Decree are reasonable, adequately resolve the environmental issues raised and properly protect the interests of the people of the State of Michigan.

1.3. The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Consent Decree and to resolve disputes arising under this Consent Decree, including those that may be necessary for its construction, execution or implementation, subject to Section XX (Dispute Resolution).

## II. PARTIES BOUND

2.1. This Consent Decree shall apply to and be binding upon Plaintiffs and Defendants and their successors and assigns. No change or changes in the ownership or corporate status of Defendants shall in any way alter Defendants' responsibilities under this Consent Decree. Defendant Weatherford shall provide the MDNR with written notice prior to the transfer of ownership of part or all of the Facility in Kalkaska, Michigan and shall also provide a copy of this Consent Decree to any subsequent owners or successors prior to the transfer of any ownership rights. Defendants shall comply with the requirements of Section 10(c) of the Michigan Environmental Response Act ("MERA"), MCL 299.610(c). Defendants shall provide a copy of this Consent Decree to all contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the Response Activities per-

formed pursuant to this Consent Decree, within fourteen (14) days after the effective date of this Consent Decree or after the date of such retention. Notwithstanding the terms of any contract, Defendants are responsible for compliance with this Consent Decree and for ensuring that their contractors, subcontractors, laboratories, and consultants perform all work in conformance with the terms and conditions of this Consent Decree.

2.2. The signatories to this Consent Decree certify that they are authorized to execute and legally bind the parties they represent.

### III. STATEMENT OF PURPOSE

3.1. The mutual objectives of Plaintiffs and Defendants in entering into the Consent Decree are to: (a) reimburse the MDNR for past response costs incurred for Response Activities relating to the Facility; (b) provide for payment of the MDNR's future response costs in verifying or overseeing the conduct of Response Activities concerning the Facility; (c) remediate releases or threatened releases of hazardous substances, pollutants, or contaminants or any discharge of injurious substances attributable to Defendants' activities at the Facility, or emanating from the Facility, through the implementation of the selected remedial action; and (d) provide contribution protection, as provided in Section XXV.

3.2. The activities conducted under this Consent Decree are subject to approval by the MDNR and Defendants shall provide all appropriate necessary information that is consistent with MERA, 1982 PA 307, as amended, MCL 299.601 et seq; MSA 13.32(1) et seq; the MERA Rules, MAC R 299.5101 et seq; and other applicable or relevant and appropriate federal and state laws and regulations.

#### IV. DEFINITIONS

4.1. "Consent Decree" means this Consent Decree and the Statement of Work attached hereto, including any future modifications pursuant to Section XVIII (Modifications/Incorporation by Reference), and any reports, plans, specifications and schedules required by the Consent Decree which, upon approval of the MDNR, shall be incorporated into and are enforceable under this Consent Decree.

4.2. "Defendants" means Grace, HOMCO, NL, Weatherford, U.S. and Weatherford International.

4.3. "Plaintiffs" means Frank J. Kelley, Attorney General, of the State of Michigan, ex rel, Michigan Natural Resources Commission and MDNR.

4.4. "Parties" means the Plaintiffs and Defendants.

4.5. All other terms used in this Consent Decree which are defined in MERA and/or the MERA Rules shall have the same meaning

in the Consent Decree as in MERA and the MERA Rules or as set forth in other provisions of this Consent Decree.

#### V. IMPLEMENTATION

5.1. Defendants shall prepare and perform all Response Activities in accordance with the time schedule set forth in this Section. The Response Activities conducted pursuant to this Consent Decree are subject to approval by the MDNR in accordance with Section XVI (Progress Reports), and shall be consistent with and in compliance with MERA and the MERA Rules.

5.2. Defendants shall deliver to the MDNR for approval the following submittals or commence or complete the following actions, as appropriate, in accordance with the following time schedule:

#### SCHEDULE

<u>SUBMITTAL/RESPONSE ACTIVITY</u>	<u>DUE DATE</u>
Statement of Work ("SOW")	Attached to Consent Decree
Plume Delineation/Investigation	90 days after entry of Consent Decree
Plume Delineation Report	60 days after completion of all plume investigation efforts
MDNR Comments to Plume Delineation Report	30 days after submission of Plume Delineation Report
Corrective Action Plan for end-of-plume treatment system at Old M-72 road location	60 days after MDNR approval of Plume Delineation Report
Implementation of Corrective Action Plan for end-of-plume	60 days after MDNR approval of Corrective Action Plan

treatment system at Old M-72  
road location

Closure Reports for  
Corrective Action

When levels of chemical of  
concern are at or below  
Type B levels for a period  
of 12 consecutive months

5.3. The Parties acknowledge and agree that this Consent Decree does not constitute a warranty or representation of any kind by the MDNR that the work performed in accordance by Defendants herein will result in the achievement of the remedial criteria as established by law.

5.4. Any report or plan submitted pursuant to this Section shall include, but not be limited to, an overview of the work conducted, a description of the methodologies employed, and documentation and analysis of data collected pursuant to this Consent Decree and the subject submission, report, plan, or other document.

#### VI. ADDITIONAL RESPONSE ACTIVITY

6.1. As used in this Section, "Additional Response Activity" shall mean all activities not specifically set forth in the approved remedial action, SOW, or Work Plan that the MDNR determines are necessary to meet the Performance and Cleanup Standards described in the administrative rules pursuant to MERA, MAC R 299.5101 et seq., and all applicable state and federal requirements, that do not fundamentally change the overall remedial approach outlined in the approved remedial action, SOW, and Work Plan. These activities may include modifications to the

components of the remedial action and to the type and cost of materials, equipment, facilities, services and supplies used to implement the remedial action.

6.2. In the event that the MDNR determines that Additional Response Activity is necessary, notification of such Additional Response Activity will be provided to the Parties' project coordinators. Any Additional Response Activities agreed to by the Parties, shall be completed by Defendants in accordance with the standards, specifications, and schedules approved by the MDNR.

6.3. Defendants shall submit a plan for the Additional Response Activities to the MDNR for approval within sixty (60) days of agreement. The plan shall be developed in conformance with the requirements of this Consent Decree. Upon approval, the plan shall be incorporated herein and made an enforceable part of this Consent Decree. Defendants shall implement the plan for Additional Response Activities in accordance with the schedule contained therein.

6.4. Nothing in this Section shall limit the power and authority of MDNR, the State of Michigan, or this Court, to take, direct, or order all appropriate action to protect public health, welfare, and safety, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances,

pollutants or contaminants on, at, or from the Facility in accord with Section XI (Creation of Danger).

VII. ENGAGEMENT OF A CONTRACTOR

7.1. ENSR Consulting and Engineering has been designated by Defendants to be their contractor to perform the technical activities required under this Consent Decree. All work performed by said contractor pursuant to this Consent Decree shall be under the general direction and supervision of a qualified individual. Defendants' contractor shall also employ project personnel who shall have direct experience in the investigation and cleanup of sites of environmental contamination. In the event Defendants desire to replace said contractor, Defendants shall notify MDNR regarding the identity and qualifications of the new contractor as soon as the contractor is engaged or at least two weeks prior to the contractor's commencement of Facility work, whichever comes first. Defendants shall notify MDNR regarding the identity and qualifications of all subcontractors as soon as each subcontractor is engaged or at least two (2) weeks prior to the subcontractor's commencement of facility work, whichever occurs first. MDNR shall have the right to disapprove, within ten (10) days of notification of a subcontractor, or project personnel, based on professional qualifications, conflicts of interest, and/or deficiencies in previous similar work, any such subcontractor, or project personnel. If MDNR disapproves any such person(s), MDNR will provide Defendants written notice

thereof, and Defendants shall have thirty (30) days to identify any replacement(s).

VIII. QUALITY ASSURANCE/SAMPLING

8.1. Defendants shall assure that MDNR and its authorized representatives are allowed access to any laboratory utilized by Defendants in implementing this Consent Decree for quality assurance monitoring.

8.2. Defendants shall submit to the MDNR the verified results of all sampling or tests and all other verified data generated by Defendants or their contractor(s), or on Defendants' behalf, in the course of implementing this Consent Decree upon receipt of such information by Defendants. Verified sampling data generated under this Consent Decree shall be admissible in evidence without waiving any objection as to weight or relevance.

8.3. At the request of MDNR, Defendants shall allow MDNR or its authorized representatives to take split and/or duplicate samples of any samples collected by Defendants pursuant to the implementation of this Consent Decree. Except as may be necessary for sampling required pursuant to Section XI (Creation of Danger), Defendants shall notify MDNR not less than seven (7) days in advance of any sample collection activity. In addition, MDNR shall have the right to take any additional samples that it

deems necessary providing Defendants reciprocal notice and rights to take split and/or duplicate samples.

8.4. Notwithstanding any provision of this Consent Decree, MDNR shall retain all of its information gathering, inspection, and enforcement authorities under MERA and other applicable statute or regulation.

#### IX. PROJECT COORDINATORS

9.1. Defendants' project coordinator shall be J.D. Tucker, Senior Project Engineer for Grace. Defendants' project coordinator shall have primary responsibility for implementation of the Response Activities at the Facility. The MDNR's project coordinator shall be Brian Maturen, Environmental Quality Analyst, Environmental Response Division, MDNR. The MDNR's project coordinator will be the primary designated representative for the MDNR at the Facility. All communication between the parties and all documents, reports, approvals, and other submissions and correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Decree shall be directed through the project coordinators. If any party decides to change its designated project coordinator, the name, address, and telephone number of the successor shall be provided, in writing, to the other party seven (7) days prior to the date on which the change is to be effective. This subsection does not relieve Defendants from other reporting obligations under the law.

9.2. Subject to Section X (Access), the MDNR may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken under this Consent Decree.

#### X. ACCESS

10.1. To the extent access to the Facility is owned, controlled by, or available to Defendants from the effective date of this Consent Decree, the MDNR, its authorized employees and representatives, upon presentation of proper credentials, shall have access at all reasonable times to the Facility for the implementation of the response activities under the Consent Decree, and for dealing with contamination migrating onto or under the Facility from an off-site source, including, but not limited to:

- (a) Monitoring the response activities or any other activities taking place under this Consent Decree on the Facility;
- (b) Verifying any data or information submitted to MDNR;
- (c) Conducting investigations relating to contamination at the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for or planning and implementing response actions at the Facility; and
- (f) Inspecting and copying non-privileged records, operating logs, contracts, or other documents upon reasonable notice required to assess compliance with this Consent Decree.

10.2. To the extent that the Facility or any other area where the Response Activities are to be performed by Defendants under this Consent Decree is owned or controlled by persons other than Defendants, Defendants shall use their best efforts to secure from such persons access for the Parties and their authorized employees and representatives. Each access agreement shall be embodied in a written document and Defendants shall provide the MDNR with a copy of each access agreement secured pursuant to this subsection. For purposes of this subsection, "best effort" includes, but is not limited to, reasonable compensation to the owner to secure such access. If, after using best efforts, Defendants are unable to obtain access within forty-five (45) days of the entry of this Consent Decree, Defendants shall promptly notify the MDNR. Plaintiffs may thereafter assist Defendants in obtaining access. Defendants shall, within thirty (30) days of a receipt of a written request from Plaintiffs, reimburse the Plaintiffs for all costs not inconsistent with law incurred by the Plaintiffs in obtaining access in the manner provided in Paragraph 21.3.

10.3. All parties granted access to the Facility pursuant to this Consent Decree shall comply with all applicable health and safety laws and regulations.

10.4. Notwithstanding any provision of this Consent Decree, the MDNR shall retain all of its inspection and access authorities under any applicable statute or regulation.

XI. CREATION OF DANGER

11.1. Upon obtaining information concerning the occurrence of any event during performance of Response Activities conducted pursuant to this Consent Decree that causes or threatens a release of a hazardous substance from the facility or that may present an imminent and substantial endangerment to on-site personnel or to the public health, safety, welfare, or the environment, Defendants shall immediately undertake all appropriate action to prevent, abate, or minimize such release or endangerment and shall immediately notify the MDNR's project coordinator or, in the event of his or her unavailability, shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any action undertaken by Defendants shall be in accordance with all applicable health and safety laws and regulations, and with the provisions of the Health and Safety Plan, as prepared by the Defendants' contractor. Defendants shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release or endangerment caused or threatened by the incident and to prevent recurrence of such an incident. Regardless of whether Defendants notify the MDNR under this subsection, if Response Activities undertaken under this Consent Decree cause or threaten a release or may present an imminent and substantial endangerment to on-site personnel or to public health, safety, welfare, or to the environment, MDNR may:

(a) require Defendants to stop Response Activities at the Facility for such period of time as may be needed to prevent or

abate any such release, threat, or endangerment; (b) require Defendants to undertake any such activities that MDNR determines are necessary to prevent or abate any such release, threat, or endangerment; and/or (c) undertake any actions that MDNR determines are necessary to prevent or abate such release, threat, or endangerment. In the event that Defendants fail to take appropriate Response action as required by this Section and the MDNR undertakes any action to abate such a release, threat, or endangerment, Defendants shall reimburse the MDNR for all costs incurred by the MDNR that are not inconsistent with law. Payment of such costs shall be made in the manner provided in Paragraph 21.3.

11.2 Nothing in the preceding subsection shall limit the power and authority of the MDNR, the State of Michigan, or this Court to take, direct, or order all appropriate action to protect the public health, welfare, and safety, or the environment, or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility in accord with Section XI (Creation of Danger).

## XII. COMPLIANCE WITH OTHER LAWS

12.1. All actions required to be taken pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including MERA, the MERA Rules, laws relating to occupational safety and health, and other State

environmental laws. Other agencies may also be called upon to review the conduct of Response Activities Under this Consent Decree. Further, Defendants must designate, in a report to the MDNR, any facilities that Defendants propose to use for such off-site transfer, storage, treatment, or disposal of materials.

XIII. RECORD RETENTION/ACCESS TO INFORMATION

13.1. Defendants and their representatives, consultants, and contractors shall preserve and retain, during the pendency of this Consent Decree and for a period of seven (7) years after its termination, all records, sampling or test results, charts, and other documents relating to historical hazardous substance disposal, treatment or handling activities at the facility or that are maintained or generated pursuant to any requirement of this Consent Decree. After the seven (7) year period of document retention, Defendants and their successors shall obtain the written permission of the MDNR prior to the destruction of such documents and, upon request, Defendants and/or their successors shall relinquish custody of all documents to the MDNR. Defendants' request shall be accompanied by a copy of this Consent Decree and sent to the following address:

Chief  
Environmental Response Division  
Michigan Department of Natural Resources  
P.O. Box 30426  
Lansing, MI 48909

13.2. Defendants shall, upon request, provide to the MDNR all documents and information within its possession or control or that of its employees or authorized representatives relating to the Response Activities at the Facility or to the implementation of this Consent Decree, including, but not limited to, verified sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, correspondence, or other documents or information related to the Response Activities. Defendants shall also, upon request, make available to the MDNR, upon reasonable notice, Defendants' employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of the Response Activities.

13.3. Defendants may assert a confidentiality or privilege claim, if appropriate, covering all or part of the information requested under this Consent Decree. Such an assertion shall be adequately substantiated when it is made. If no such claim accompanies the information when it is submitted to the MDNR, it may be made available to the public by the MDNR without further notice to Defendants. Analytical data shall not be claimed as confidential or privileged by Defendants.

XIV. NOTICES

14.1. Whenever, under the terms of this Consent Decree, notice is required to be given or a report, sampling data, analysis, or other document is required to be forwarded by one party to the other, such correspondence shall be directed to the following individuals at the specified addresses or at such other address as may subsequently be designated in writing:

As to MDNR:

Brian Maturen  
Environmental Response Division  
Michigan Department of  
Natural Resources  
Route#1  
8015 S. Mackinaw Trail  
Cadillac, MI 49601  
(616) 775-9777

As to Defendants:

R. J. Medler  
W.R. Grace & Co. - Conn.  
Homco International, Inc.  
100 N. Main, Ste. 1700  
Memphis, TN 38103  
(901) 522-2051

Barry Sams  
NL Industries, Inc.  
Corporate Environmental  
Services  
P.O. Box 1090  
Wyckoffs Mill Road  
Hightstown, NJ 08520  
(609) 443-2410

Robin C. Palmer, Esq.  
Weatherford U.S. Inc. and  
Weatherford International  
Incorporated  
1360 Post Oak, Ste. 1000  
Houston, TX 77056  
(713) 439-9416

XV. SUBMISSIONS AND APPROVALS

15.1. All plans, reports or other submissions ("submissions") shall be delivered to the MDNR in accordance with the schedule set forth in this Consent Decree. Prior to receipt of the approval, any report submitted to the MDNR for approval shall be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document prepared by Defendants pursuant to a Court Order, which has not received final acceptance from the Michigan Department of Natural Resources ("MDNR"). The opinions, findings, and conclusions expressed are those of the authors and not those of MDNR."

15.2. Upon receipt of any submission relating to the Response Activities that is required to be submitted for approval under this Consent Decree, the MDNR project coordinator will in writing: (a) approve the submission; (b) disapprove the submission, notifying Defendants of deficiencies; or (c) approve the submission with modifications to cure a deficiency. In the case of a MDNR disapproval or modification, a written explanation shall be appended. Upon receipt of a notice of approval or modification from the MDNR, Defendants shall proceed to take any action required by the plan, report, or other submission as approved or as modified, and shall submit a new cover page marked "Final."

15.3. Notice of any disapproval will specify the reason(s) for the disapproval. Unless a notice of disapproval specifies a longer time period, upon receipt of a notice of disapproval from the MDNR, Defendants shall, within thirty (30) days thereafter, correct the deficiencies and resubmit the submission for approval. Notwithstanding a notice of disapproval, Defendants shall proceed to take any response action not directly related to the deficient portion of the submission. If, upon resubmission, the submission is not approved, the MDNR shall so advise Defendants and will consider Defendants to have failed to complete the submittal in a timely manner or failed to have provided a submission of acceptable quality.

15.4. A finding of approval or an approval with modifications shall not be construed to mean that the MDNR concurs with all conclusions, methods, or statements in the submissions or warrants that the submission comports with law.

15.5. No informal advice, guidance, suggestions, or comments by the MDNR regarding any submissions by Defendants shall be construed as relieving Defendants of their obligation to obtain such formal approval as may be required by this Consent Decree.

XVI. PROGRESS REPORTS

16.1. Defendants shall provide to the MDNR written progress reports relating to response action that shall: (a) describe the actions that have been taken toward achieving compliance with this Consent Decree during the previous year; (b) describe data collection and activities scheduled for the next year; and (c) include all results of sampling and tests and other data received by Defendants, their employees or authorized representatives during the previous year relating to the Response Activities performed pursuant to this Consent Decree. Annual reports shall be submitted to the MDNR sixty (60) days following the entry date of this Consent Decree by the Court and thereafter on the anniversary date of such submission until issuance of the Certificate of Completion as provided in Section XXVI (Certification).

16.2. Defendants shall provide quarterly reports in accordance with the SOW. The current schedule for conducting quarterly sampling is the third week of January, April, July and October. Quarterly reports will be submitted to the MDNR within 60 days of receiving analytical data. All comments received from the MDNR will be addressed in writing within 30 day after receipt.

XVII. INDEMNIFICATION

17.1. Defendants shall indemnify and save and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any and all claims or causes of action arising from or on account of acts or omissions of Defendants, their officers, employees, agents, and any persons acting on its behalf or under its control in carrying out response activities pursuant to this Consent Decree. Plaintiffs shall notify Defendants of any such claims or actions promptly after receipt of notice. Neither the State of Michigan nor its departments, agencies, officials, agents, employees, contractors, and representatives shall be held out as a party to any contract entered into by or on behalf of Defendants in carrying out actions pursuant to this Consent Decree. Neither Defendants nor any contractor shall be considered an agent of the State.

17.2. Defendants waive any and all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State that arise from or on account of any contract, agreement, or arrangement between Defendants and any person for performance of Response Activities at the Facility or any other property where Response Activities are performed under this

Consent Decree, including claims on account of construction delays.

17.3. Defendants shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for any and all claims or causes of action for damages or reimbursement from the State arising from or on account of any contract, agreement, or arrangement between Defendants and any person for performance of Response Activities at the Facility or any other property where Response Activities are performed under this Consent Decree, including claims on account of construction delays.

17.4. Prior to commencing Response Activities, Defendants shall secure, and shall maintain for the duration of this Consent Decree, comprehensive general liability insurance with limits of not less than \$1 million per claim/\$3 million aggregate, combined single limit, naming the MDNR and the State of Michigan as additional insureds. If Defendants demonstrate by evidence satisfactory to the MDNR that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor, Defendants need to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the method used to insure, Defendants shall provide the MDNR with certificates evidencing said insurance and the MDNR's and the State of Michigan's status as additional insureds. In addition,

for the duration of this Consent Decree. Defendants shall satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response action on behalf of Defendants in furtherance of this Consent Decree. Prior to commencement of the Response Activity under this Consent Decree, Defendants shall provide to the MDNR satisfactory proof of such insurance.

XVIII. MODIFICATIONS/INCORPORATION BY REFERENCE

18.1. This Consent Decree may only be modified upon the written agreement of the MDNR by signature of the Director and Defendants' authorized representatives.

18.2. Any submission and attachments to submissions required by this Consent Decree which have been approved by the MDNR are incorporated into this Consent Decree. Any delay or non-compliance with such submissions or attachments to a submission shall be considered delay or noncompliance with the requirements of this Consent Decree and shall subject Defendants to penalties pursuant to Section XXII (Stipulated Penalties).

XIX. DELAYS IN PERFORMANCE

19.1. Any delay attributable to a Force Majeure shall not be deemed a violation of Defendants' obligations under this Consent Decree in accordance with this Section.

19.2. Defendants shall perform the requirements of this Consent Decree within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure." "Force Majeure" is defined, for the purpose of this Consent Decree, as an occurrence or nonoccurrence arising from causes entirely beyond the control of and without the fault of the Defendants. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes, or failure to obtain a permit or license as a result of Defendants' actions or omissions.

19.3. When circumstances occur that Defendants believe constitute a Force Majeure, Defendants shall notify the MDNR by telephone or telefax of the circumstances within twenty-four (24) hours after it first becomes aware of those circumstances. Within five (5) working days after Defendants first become aware of such circumstances, Defendants shall supply the MDNR, in writing, an explanation of the cause(s) of any actual or expected delay, the anticipated duration of the delay, the measures taken, and to be taken, by Defendants to avoid, minimize, or overcome the delay, and the timetable for implementation of such measures. Failure of Defendants to comply with the written notice provision of this subsection shall constitute a waiver of Defendants' right to assert a claim of Force Majeure with respect to the circumstances in question.

19.4. If the MDNR agrees that a delay is or was caused by Force Majeure, Defendants' delay shall be excused and the MDNR shall provide Defendants such additional time as may be necessary to compensate for the Force Majeure event. Defendants shall have the burden of demonstrating (i) that the delay is or was caused by a Force Majeure event; and (ii) that the amount of additional time requested is necessary to compensate for that event.

19.5. An extension of one compliance date based upon a particular Force Majeure incident does not mean that Defendants qualify for an extension of a subsequent compliance date without meeting their burden of proof for each incremental step or other requirement for which an extension is sought.

#### XX. DISPUTE RESOLUTION

20.1. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Decree and shall apply to all provisions of this Consent Decree, excluding Section XI (Creation of Danger). Any dispute that arises under this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed ten (10) days from the date of written notice by any party that a dispute has arisen, but it may be extended by agreement between the Parties. The period for informal negotiations shall end when MDNR provides a written statement setting forth its proposed res-

tion in accordance with and in the manner provided in Section XXII (Stipulated Penalties), as appropriate.

20.5. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the work, Defendants shall have the burden of demonstrating on the administrative record that the position of MDNR is arbitrary and capricious or otherwise not in accordance with law. For purposes of this subsection, the adequacy of the work includes: (1) the adequacy or appropriateness of permits, licenses, and plans, and procedures to implement such permits, licenses, or plans, or any other item requiring approval by MDNR under this Consent Decree; and (2) the adequacy of construction and remedial action performed pursuant to this Consent Decree. In proceedings on any dispute, Defendants shall bear the burden of persuasion on factual issues. Nothing herein shall prevent MDNR from arguing that the Court should apply the arbitrary and capricious standard of review to all disputes under this Consent Decree.

#### XXI. REIMBURSEMENT OF COSTS

21.1. On the entry date of this Consent Decree, Defendants shall pay MDNR Twenty Three Thousand Two Hundred and 13/100 Dollars (\$23,200.18) in reimbursement of response costs incurred by MDNR from July 1, 1991, through June 30, 1994, for Response Activities relating to the Facility. For the purposes of this Decree, the term "costs incurred" is defined as costs that have

been dispersed or paid out by the State. It does not include costs that are due or owed by the State.

21.2. As soon as possible after each anniversary of the entry date of this Consent Decree, MDNR will provide Defendants with a written demand of response costs incurred by the State in overseeing or verifying the conduct of the Response Activities concerning the Facility, including, but not limited to, reviewing, developing, or modifying submissions; split sampling; undertaking an action to prevent or abate a release, threat, or endangerment; overseeing field work; entering into a contract with a contractor to oversee or verify any or all portions of the Response Activities at the Facility; and enforcing, monitoring and documenting compliance with this Consent Decree. Any such demand will set forth with reasonable specificity the nature of the costs incurred.

21.3. All costs recovered pursuant to this Section shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 9(3) of MERA, MCL 299.509(3). Defendants shall have the right to request a full and complete accounting of all demands hereunder. Defendants shall reimburse MDNR for such costs within sixty (60) days of receipt of a written demand and complete accounting, if requested, from MDNR. In any challenge by Defendants to a demand for recovery of costs by MDNR, Defendants shall have the burden of establishing that the costs were not lawfully incurred, in accordance with Section 12(2)(a) of MERA, MCL 299.612(2)(a), and are inconsistent with

the National Contingency Plan (40 CFR Part 300). All payments made pursuant to this Consent Decree shall be by check payable to the "State of Michigan," and shall be sent by first-class mail to the following address:

Assistant Attorney General In Charge  
Natural Resources Division  
P.O. Box 30028  
Lansing, MI 48909

The Facility name and Court Docket number shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDNR Project Coordinator.

XXII. STIPULATED PENALTIES

22.1. Except as provided by Sections XIX (Delays in Performance) and XX (Dispute Resolution), if Defendants fail or refuse to comply with any term or condition in Sections V (Implementation), VI (Additional Response Activity), XI (Creation of Danger), XVI (Progress Reports), and XXI (Reimbursement of Costs), Defendants may be required to pay the MDNR stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th Day	\$ 500.00
15th through 30th	\$1,000.00
Beyond 30 Days	\$1,500.00

22.2. Except as provided in Section XX and XXI, if Defendants fail or refuse to comply with any other term or condition of this Consent Decree, Defendants may be required to pay the MDNR stipulated penalties of \$500.00 a day for each and every failure or refusal to comply.

22.3. Defendants shall notify the MDNR, in writing, of any violation of this Consent Decree no later than five (5) days after becoming aware of such violation and shall describe the violation.

22.4. Stipulated penalties may begin to accrue on the day performance was due, or other failure or refusal to comply occurred, and may continue to accrue until the final day of correction of the noncompliance. Separate penalties may accrue for each separate failure or refusal to comply with the terms and conditions of this Consent Decree.

22.5. Except as provided in Section XX (Dispute Resolution), stipulated penalties owed to the MDNR shall be paid no later than thirty (30) days after receiving a written demand from the MDNR. Payment shall be made in the manner provided in Paragraph 21.3. Interest may accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in Section 12(4) of MERA, MCL 299.612(4). Failure to pay the stipulated penalties

within thirty (30) days after receipt of a written demand constitutes an independent violation of the terms and conditions of this Consent Decree.

22.6. Liability for or payment of stipulated penalties are not MDNR's exclusive remedy in the event Defendants violate this Consent Decree. MDNR reserves the right to pursue any other remedy or remedies that it is entitled to under this Consent Decree or any applicable law for any failure or refusal of Defendants to comply with the requirements of this Consent Decree, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, reimbursement, exemplary damages in the amount of three (3) times the costs incurred by the State of Michigan, and sanctions for contempt of court, provided that the stipulated penalties set forth above shall be credited against any such civil penalties.

XXIII. COVENANT NOT TO SUE BY PLAINTIFFS  
AND RESERVATION OF RIGHTS

23.1. In consideration of the actions that will be performed and the payments that will be made by Defendants under the terms of the Consent Decree, and except as specifically provided in this Section, Plaintiffs covenant not to sue or to take administrative action against Defendants for Covered Matters.

23.2. "Covered Matters" shall include any liability to the State of Michigan of the Defendants herein under applicable state

and federal law relating to the Facility (including MERA and CERCLA) for the following:

- (a) Performance of the agreed upon Work by Defendants under the Consent Decree;
- (b) Payment of past response costs and future oversight costs incurred by the State as set forth in Paragraphs 21.1 and 21.3 of this Consent Decree;
- (c) Performance of Response Activities related to releases of Methyl Ethyl Ketone or any of its constituents and breakdown products at or emanating from the Facility.

23.3. The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in Paragraph 23.2. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all other matters, including but not limited to, the following:

- (a) Liability arising from a violation by Defendants of a requirement of this Consent Decree, including conditions of approved submissions required herein;
- (b) Liability for any Additional Response Activities required at the Facility;
- (c) Liability for any response costs incurred by the MDNR other than those referred to in Section XXI;
- (d) Liability arising from the past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substance(s) taken from the Facility;
- (e) Liability for damages for injury to, destruction of, or loss of natural resources;
- (f) Liability for criminal acts,
- (g) Any matters for which the State is owed indemnification under Section XVII (Indemnification) of this Consent Decree; and

- (h) Liability for violations of federal or state law which occur during or after implementation of the Remedial Action.

23.4. With respect to liability for Facility response costs incurred prior to the effective date of this Consent Decree, this covenant not to sue shall take effect upon receipt by the MDNR of the payments required by Paragraph 21.1. With respect to liability for performance of response activities required to be performed under this Consent Decree, and response activity costs incurred by the State after the effective date of this Consent Decree and reimbursement of those costs by Defendants pursuant to Paragraph 21.2 of this Decree, the covenant not to sue shall take effect upon issuance by MDNR of the Certification of Completion in accordance with with Section XXVI. The covenant not to sue is conditioned upon the complete and satisfactory performance by Defendants of their obligations under this Consent Decree. The covenant not to sue extends only to the Defendants and does not extend to any other person.

23.5. Plaintiffs' Pre-Certification of Completion  
Reservations: Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Defendants (1) to perform further response activities relating to the Facility or (2) to reimburse the State

of Michigan for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (a) Conditions at the Facility, previously unknown to the MDNR, are discovered after the entry of this Consent Decree; or
- (b) New information is received regarding conditions at the Facility after the entry of this Consent Decree;

and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of the public health, safety, or welfare, or the environment.

#### 23.6. Plaintiffs' Post-Certification of Completion

Reservations: Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue and administrative order seeking to compel Defendants (1) to perform further response activities relating to the Facility or (2) to reimburse the State of Michigan for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

- (a) Conditions at the Facility, previously unknown to the MDNR, are discovered after the Certification of Completion; or
- (b) New information is received regarding conditions at the Facility after the Certification of Completion;

and these previously unknown conditions or this information together with other relevant information indicate that the

- 36 -

(Creation of Danger).

take any and all response activities authorized by Section XI  
Decree, MDNR retains all authority and reserves all rights to  
23.9. Notwithstanding any other provision of this Consent

reimbursement for such activities.  
the response activities as MDNR determines necessary and obtain  
perform, or contract to have performed, any and all portions of  
notice to defendants and an opportunity to confer with the MDNR,  
adequate or timely manner, MDNR may, after ten (10) days written  
failed to implement any provisions of the Consent Decree in an  
23.8. In the event MDNR determines that defendants have

Action.

Decree prior to Certification of Completion of the Remedial  
received by MDNR pursuant to the requirements of this Consent  
record supporting the Remedial Action, and any information  
information and those conditions set forth in the administrative  
by and the conditions known to the MDNR shall include only that  
purposes of Paragraph 23.6, the information previously received  
the administrative record supporting the Remedial Action. For  
include only that information and those conditions set forth in  
ously received by and the conditions known to the MDNR shall  
23.7. For purposes of Paragraph 23.5, the information previ-

or welfare, or the environment.

Remedial Action is not protective of the public health, safety,

XXIV. COVENANT NOT TO SUE BY DEFENDANTS

24.1. Defendants hereby covenant not to sue and agree not to assert any claim or cause of action against the State of Michigan with respect to the Facility or response activities relating to the Facility arising from this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 10f(5) of MERA, MCL 299.610f(5) or any other provision of law.

24.2. In any subsequent administrative or judicial proceeding initiated by the Attorney General for injunctive relief, recovery of Response Activity costs, or other appropriate relief relating to the Facility, Defendants agree not to assert, and may not and shall not maintain any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the MDNR or the Attorney General in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Section XXIII (Covenant Not to Sue by Plaintiffs and Reservation of Rights) or the Contribution Protection set forth in Section XXV.

XXV. CONTRIBUTION PROTECTION

25.1. Pursuant to Section 12c(5) of MERA, MCL 299.612c(5), Section 13 of CERCLA, 42 USC 9613 and any other state or federal law and consistent with Section XXIII (Covenant Not to Sue by Plaintiffs and Reservation of Rights), Defendants shall not be liable for claims for contribution under Section 12 of MERA, MCL 299.612; 42 USC 9607 and 9613; or any other state or federal cause of action regarding matters addressed in this Consent Decree, which include without limitation any past, ongoing or future investigation, remedial, or other response activities and costs due to an actual or threatened release of hazardous substances at or emanating from the Facility. Entry of the Consent Decree does not discharge the liability of any other person(s) liable under Section 12 of MERA, MCL 299.612. In any action by Defendants for contribution from any person not a party to this Consent Decree, Defendants' cause of action shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to MERA or other applicable federal or state law, in accordance with Section 12c(8) of MERA, MCL 299.612c(8).

XXVI. CERTIFICATION

26.1. When Defendants determine that they have completed all the Response Activities required by this Consent Decree, they shall submit to the MDNR a Notification of Completion and a draft final report. The draft final report shall summarize all response activities performed under this Consent Decree. The

draft final report shall include or reference any supporting documentation.

26.2. Upon receipt of the Notification of Completion, the MDNR will review the Notification of Completion, the draft final report, any supporting documentation, and the actual response activities performed pursuant to this Consent Decree. Within ninety (90) days of receipt of the Notification of Completion, the MDNR will determine whether Defendants have satisfactorily completed all requirements of this Consent Decree, including, but not limited to, completing the Response Activities required by this Consent Decree, complying with all terms and conditions of this Consent Decree, and paying any and all cost reimbursement and stipulated penalties owed to the MDNR. If the MDNR determines that all requirements have been satisfied, the MDNR will so notify Defendants, and upon receipt of a "Final" final report in accordance with Section XV, shall issue a Certificate of Completion.

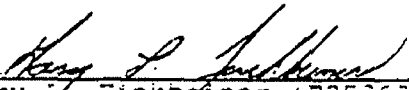
#### XXVII. SEPARATE DOCUMENTS

27.1. This Consent Decree may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXVIII. EFFECTIVE DATE

23.1. This Consent Decree shall be effective upon the date that the Court enters this Consent Decree. All times for performance of activities under this Order shall be calculated from that date.

IT IS SO AGREED BY:

  
\_\_\_\_\_  
Gary L. Finkbeiner (P15363)  
Assistant Attorney General  
Natural Resources Division  
530 Allegan Street  
8th Floor, Mason Building  
Lansing, MI 48909  
(517) 383-7540

DATE: Oct 14 1994

IT IS SO AGREED BY:

W. R. GRACE & CO.-CONN.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

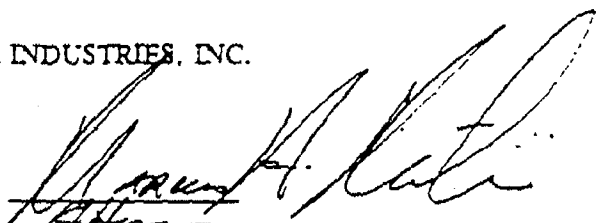
IT IS SO AGREED BY:

HOMCO INTERNATIONAL, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

IT IS SO AGREED BY:

NL INDUSTRIES, INC.

By:   
Its: Attorney  
Date: 10/6/94

IT IS SO AGREED BY:

WEATHERFORD U.S., INC.

By: Theresa Shonai  
Its: Senior Vice President  
Date: October 3, 1994

IT IS SO AGREED BY:

WEATHERFORD INTERNATIONAL INCORPORATED

By: Theresa Shonai  
Its: Senior Vice President  
Date: October 3, 1994

IT IS SO AGREED BY:

HOMCO INTERNATIONAL, INC.

By: Frank L. Ryan  
Its: President  
Date: 10/5/14

IT IS SO AGREED BY:

W. R. GRACE & CO.-CONN.

By: FP Boer  
Its: Executive Vice President  
Date: Oct 9, 1994

IT IS SO AGREED BY:

NL INDUSTRIES, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

IT IS SO AGREED BY:

WEATHERFORD U.S., INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

IT IS SO AGREED BY:

WEATHERFORD INTERNATIONAL INCORPORATED

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

IT IS SO ORDERED, ADJUDGED AND DECREED  
THIS \_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_  
Honorable  
Circuit Court Judge

ATTEST: A TRUE COPY

\_\_\_\_\_  
Deputy Court Clerk

rd/cases/9400088 grace.9-23

Scope of Work (SOW)  
Kalkaska Site

The investigative and corrective action process as outlined in this Scope of Work (SOW) provides a guide that will be followed for characterizing the nature and extent of impacted groundwater, for evaluating potential remedial options, for implementing the selected remedial option (treatment system) and operation of all treatment systems. This SOW is a flexible process that must be tailored to specific characteristics and needs as they arise. This SOW provided a continuous process to investigate and remediate impacted groundwater in a time-efficient and cost-effective manner.

The objectives of the SOW are as follows:

1. Delineate the extent (horizontal and vertical) of the impacted groundwater in a timely and cost-effective manner.
2. Gather a sufficient amount of data to develop a list (minimum of two) of interim corrective action alternatives to be evaluated for the untreated portion of the plume.
3. Evaluate the effectiveness and cost of at least two (2) alternatives and to evaluate a "no action" alternative.
4. Prepare and submit "Corrective Action Plans" as needed, to the MDNR, which recommend and justify a specific corrective action.
5. Install a treatment system as described in the "Corrective Action Plans".
6. Operate, maintain, monitor and report to MDNR the effectiveness of all treatment systems.
7. Prepare and submit to MDNR closure reports after achieving Type B levels for each specific corrective action taken.

Specifically the Scope of Work includes:

1. Plume Delineation/Investigation - Installation of temporary monitor wells by the Casing Pull Back (CPB) or other MDNR approved method to determine the vertical and horizontal extent of the impacted groundwater. Temporary CPB wells may be installed in the right of way of public roads or on private land if access can be arranged with the property owner. The exact location of each well will be determined in part by the availability of appropriate drilling locations.

Scope of Work (SOW)  
Kalkaska Site

Groundwater samples will be analyzed by an acceptable laboratory (currently S.O.S. Analytical in Traverse City). Quality assurance will be maintained and will provide for quality control, sampling protocol, chain of custody procedures and quality assurance (duplicates).

Permanent monitor wells will be installed to provide permanent delineation and migration monitoring points along the plume. The well will be installed to delineate the vertical and horizontal extent of the impacted area. It is understood that as the plume migrates additional monitor wells may be required and that original delineation wells may lose their usefulness and no longer require sampling. All wells may lose their usefulness and no longer require sampling. All wells will be installed at agreed upon locations and sampled in accordance with the current MDNR guidelines. Monitor wells will be installed and sampled within 90 days of entry of the Consent Decree.

2. Delineation/Investigation Report - A plume delineation report will be prepared describing the additional plume delineation effort and results since submittal of the previous delineation report entitled "Interim Report 11, Subsurface Investigation of the TCE Plume Area" and will focus on the area downgradient of the UVB treatment system located at Coral and Norway Streets.

The report will be sufficiently detailed to provide delineation of the TCE plume from the source area to the last documented downgradient point of existence. The report will be prepared upon completion of all delineation efforts and submitted to the MDNR within 60 days thereafter. Comments from the MDNR will be addressed in writing within 30 days. If necessary, the report will be modified or amended to provide sufficient data and information to satisfy MDNR comments or requests.

The report will include the following:

- Outline of work accomplished to date,
- Explanation of any deviations from the work plan,
- Summary of analytical results in table form,
- Laboratory data,
- Discussion of data gaps,
- Boring and well logs,

Scope of Work (SOW)  
Kalkaska Site

- Site maps with applicable data (surveyed boring locations, well locations and CPB locations with/without analytical results and other appropriate data), and
  - Recommendations for further investigations.
3. Corrective Action Plan - A corrective action plan which addresses the untreated portion of the TCE plume, downgradient of the UVB system, will be prepared and submitted to the MDNR for approval. The Plan will evaluate at least two remedial alternatives and make a specific recommendation for an additional treatment system to be installed downgradient of the UVB treatment system at Coral and Norway Streets. Any additional treatment systems shall include additional performance monitoring wells both laterally and downgradient of the new treatment systems. Upon MDNR approval of the Plan and obtaining property access and appropriate permits, HOMCO and Grace will proceed within 60 days with installation of the approved systems.
4. Corrective Action - HOMCO and Grace will continue to operate the Granular Activated Carbon (GAC) treatment system located at 424 East Dresden, the UVB in-situ remedial system located at Coral and Norway Streets in Kalkaska, along with an additional system to be installed at the end of the TCE plume. Each system will be operated until chemical analysis of the groundwater indicates that Type 3 levels of the chemical of concern have been achieved.

During excavation to remove TPH impacted under the machine shop building floor in June 1991, one area could not be excavated further because it was directly beneath the building supporting wall. Samples from borings on the opposite side of the wall showed that TPH impacts did not extend east of the building foundation. The amount of soil above groundwater level is estimated to be 8 to 12 feet below grade, five feet in width and 10 feet in length. Groundwater beneath the area will be treated by the on-site GAC treatment system to Type 3 levels. HOMCO and Grace will reexamine the area of the impacted soil beneath the building supporting wall to determine closure requirement.

Quarterly Reports of TCE plume monitoring data will be expanded to include appropriate monitor wells along the plume up to the location of the UVB systems at Coral and Norway. The Quarterly Reports will be expanded as needed to include additional plume area and additional treatment systems as required. Quarterly reporting for both the Northwest Plume

Scope of Work (SOW)  
Kalkaska Site

and the TCE plume will continue until operation of the treatment system or systems is terminated.

The current schedule for conducting quarterly sampling is the third week of January, April, July and October. Quarterly Reports will be submitted to the MDNR within 60 days of receiving analytical data. All comments received from the MDNR will be addressed in writing within 30 days after receipt.

5. Closure Reports - Upon MDNR approval of closure, the associated system will be shutdown, dismantled and removed, and all associated monitor wells will be plugged and abandoned.

- After reaching target cleanup levels, the purge wells and all monitoring wells within the defined plume must show target Type A or Type B standards with the system running for six consecutive months. The purge well is to be sampled quarterly for all constituents of concern; the monitoring wells are to be sampled for two quarters (i.e., six months) for all constituents of concern prior to purge well shut down.
- After purge system shutdown, all wells within the defined plume shall be sampled quarterly for one year for all constituents of concern.
- Sample results from all wells must show the target levels or below--Type A or Type B--for 12 consecutive months to demonstrate cleanup.
- Levels exceeding the target levels--Type A or Type B--at any monitoring point during the post closure monitoring triggers purge system start-up.